



August 8, 2008

The Honorable John D. Dingell, Chairman  
The Honorable Joe Barton, Ranking Member  
United States House of Representatives  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington D.C. 20515

The Honorable Edward J. Markey, Chairman  
The Honorable Cliff Stearns, Ranking Member  
United States House of Representatives  
Subcommittee on Telecommunications and the Internet  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington D.C. 20515

Dear Chairman Dingell, Ranking Member Barton, Chairman Markey and Ranking Member Stearns:

Thank you for your letter of August 1<sup>st</sup> to Mr. Falco regarding emerging online advertising technologies. We appreciate the Committee's interest. Online advertising is a critical component of the Internet ecosystem, financially supporting and allowing consumers access to dynamic content and services of their choice at no cost. Furthermore, tailored online advertising also enhances consumers' experience and empowers them by providing relevant ads and information about products and services. As a significant U.S.-led business industry, online advertising currently generates an estimated \$21 billion in ad expenditures,<sup>1</sup> and also fosters development and growth in many other industries and sectors that are critical to the U.S. economy.

Consumer privacy has always been, and will continue to be, a critical issue in the online advertising environment, particularly in the context of targeted marketing. For this reason, AOL LLC ("AOL") is committed not only to incorporating privacy considerations in its business practices, but also has contributed to a variety of privacy initiatives relating to online behavioral advertising. Those initiatives include participating in the FTC's Town Hall meeting on this topic and commenting on the FTC staff's proposed Self Regulatory Principles. AOL also participated in the development of the privacy guidelines recently promulgated by the Interactive Advertising Bureau and the Network Advertising Initiative (NAI). Additionally, AOL's advertising businesses

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<sup>1</sup> See [http://www.iab.net/about\\_the\\_iab/recent\\_press\\_releases/press\\_release\\_archive/press\\_release/339821](http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/339821).

have launched a consumer education program to help better inform users about online data collection through cookies, and to help users understand the choices they have. Indeed, AOL is on track this year to deliver more than 1 billion public service banner advertisements to educate users about behavioral targeting and point them to opt-out mechanisms.<sup>2</sup> As an ongoing objective, AOL continues to support efforts to enhance privacy practices and educate consumers.

Broadly speaking, AOL provides three different types of Internet services to consumers and businesses that involve advertising. Each of these services gathers and uses data to offer relevant online ads consistent with AOL's core privacy values and industry best practices relevant to the underlying technologies. That said, none of the advertising offered through these AOL services involves the so-called "deep packet inspection" model of advertising targeting. Nor has AOL carried out tests of this technology.

First, AOL operates a variety of Web-based properties and services, such as the AOL.com portal (which offers e-mail and a broad variety of content). These services are offered at no charge to consumers and are supported by Internet advertising. Moreover, these services cater to users who personally register for, and regularly sign in to, these Web services, and are therefore specifically designed to offer users a customized and relevant experience based on both the user's explicitly stated preferences and his or her interaction with the service. For example, in order to provide the personalized news service on the AOL.com portal (MyAOL), learning about a consumer's content preferences over time allows us to provide more relevant news content and advertisements. AOL offers users of these Web services a variety of privacy choices and marketing preferences that are made available in its privacy policies and relevant locations within each service.<sup>3</sup>

Second, AOL offers advertisers the ability to reach broad Internet audiences through the advertising networks that comprise its Platform-A Inc. business group ("Platform-A"). Platform-A's integrated advertising networks use cookies to help serve ads on behalf of thousands of Web site publishers both large and small, including AOL's own Web properties. Among other things, these networks enable advertisers to reach interested audiences by, for example, inferring from a user's visit to an auto site within the network that he or she may belong to the segment of Web users interested in buying a new car -- and capturing that insight in a non-personally identifiable format. To be clear, Platform-A's ad networks do not collect personal information about users from Web site publishers. Moreover, Platform-A contractually requires Web site publishers in its networks who participate in behavioral targeting to disclose in their privacy policies that cookies are being used to establish anonymous, high-level profiles based on a consumer's actions within the advertising network, and to give users the opportunity to opt-out of

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<sup>2</sup> See <http://corp.aol.com/o/mr-penguin/> to view the animated promotion.

<sup>3</sup> For the AOL Web portal service and access services, the relevant policies are available at [http://about.aol.com/aolnetwork/mem\\_policy](http://about.aol.com/aolnetwork/mem_policy) and [http://about.aol.com/aolnetwork/aol\\_pp](http://about.aol.com/aolnetwork/aol_pp).

such data use.<sup>4</sup> In addition to these AOL protections, browser tools and other commercially-available software also allow users to control and manage their privacy preferences.

Third, AOL continues to operate a significant dial-up Internet access business, for which members pay on a monthly basis. In addition to the types of Web services offered through the AOL portal, paying members also receive supplemental features, such as safety and security software. Paying members generally receive targeted advertisements in the same manner as users of AOL's Web properties, and are afforded similar (and additional) privacy and marketing preferences.

Because AOL does not deploy "deep packet inspection" advertising technology, some of the Committee's questions may not be directly applicable to AOL's advertising practices. AOL nevertheless will attempt to answer the specific questions:

*1. Has your company at any time tailored, or facilitated the tailoring of, Internet advertising based on consumers' Internet search, surfing, or other use?*

As stated above, and as described in detail in AOL's privacy policies,<sup>5</sup> AOL delivers relevant advertising to consumers based on their use and choices of various AOL services and features. Platform-A's advertising networks also facilitate delivery of targeted advertising, again as described in detail in their respective privacy policies.

*2. Please describe the nature and extent of any such practice and if such practice had any limitations with respect to health, financial, or other sensitive personal data, and how such limitations were developed and implemented.*

In addition to the general description provided above, AOL's advertising practices for its Web properties, access services, and Platform-A advertising business are described in the relevant privacy policies for such services.<sup>6</sup>

With respect to potentially sensitive data, AOL's Platform-A advertising businesses adhere to the recently updated NAI "Guidelines on Restricted and Sensitive Consumer Segments."<sup>7</sup> Advertising on AOL's Web properties and access services adheres to similar restrictions.

*3. In what communities, if any, has your company engaged in such practice, how were those communities chosen, and during what time periods was such practice used in each? If such practice was effectively implemented nationwide, please say so.*

AOL's advertising practices apply to users of its services nationwide.

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<sup>4</sup> For the Platform-A advertising businesses, the relevant privacy policies are collectively presented at [http://about.aol.com/aolnetwork/privacy\\_consumer\\_choice](http://about.aol.com/aolnetwork/privacy_consumer_choice).

<sup>5</sup> See above notes 2 and 3.

<sup>6</sup> *Ibid.*

<sup>7</sup> See [http://www.networkadvertising.org/networks/NAI\\_Principles\\_2008\\_Draft\\_for\\_Public.pdf](http://www.networkadvertising.org/networks/NAI_Principles_2008_Draft_for_Public.pdf).

*4. How many consumers have been subject to such practice in each affected community, or nationwide?*

Presently, there are approximately 111 million average monthly domestic unique visitors to AOL's Web properties. The ad networks comprising Platform-A serve ads to approximately 170 million unique U.S. users.<sup>8</sup> There are approximately 8.1 million subscribers to AOL's Internet access service.

*5. Has your company conducted a legal analysis of the applicability of consumer privacy laws to such practice? If so, please explain what that analysis concluded.*

AOL's online advertising practices are designed to comply with applicable law.

*6. How did your company notify consumers of such practice? Please provide a copy of the notification. If your company did not specifically or directly notify affected consumers, please explain why this was not done.*

AOL presents the applicable terms of service and privacy policy to all registrants for its Web and access services, and secures each registrant's affirmative consent to those policies. Each AOL service also gives users a variety of opportunities to specify their personal privacy and marketing preferences. Additionally, Platform-A's businesses contractually require all of their network publishers that deliver relevant ads through behavioral targeting to disclose their cookie-related advertising practices and to provide opt-out links.<sup>9</sup>

*7. Please explain whether your company asked consumers to "opt in" to the use of such practice or allowed consumers who objected to "opt out." If your company allowed consumers who objected to opt out, how did it notify consumers of their opportunity to opt out? If your company did not specifically or directly notify affected consumers of the opportunity to opt out, please explain why this was not done.*

Please see above response to question 6.

*8. How many consumers opted out of being subject to such practice?*

We estimate that the total number of users who have exercised their choice to opt-out of behavioral targeting by AOL's ad networks is in the tens of thousands. This figure does not necessarily include users that utilize browser tools or other off-the-shelf commercial software to manage their cookie and other privacy preferences.

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<sup>8</sup> See <http://www.comscore.com/press/data.asp>.

<sup>9</sup> Additionally, these opt-out links are integrated with those operated by the NAI, and which allow consumers to opt-out of relevant advertising across all the NAI's participating networks (which account for more than 90% of targeted online ads).

*9. Did your company conduct a legal analysis of the adequacy of any opt-out notice and mechanism employed to allow consumers to effectuate this choice? If so, please explain what that analysis concluded.*

AOL's online advertising practices are designed to comply with applicable law.

*10. What is the status of consumer data collected as a result of such practice? Has it been destroyed or is it routinely destroyed?*

AOL's data retention periods are consistent with customer preferences and the purposes for which the data is gathered. For example, AOL retains information about a user's content preferences over time in order to provide customized service. By contrast, audience segmentation insights used for advertising are relevant for a shorter period of time, and are not retained beyond that period.<sup>10</sup>

*11. Is it possible for your company to correlate data regarding consumer Internet use across a variety of services or applications you offer to tailor Internet advertising? Do you do so? If not, please indicate what steps you take to make sure such correlation does not happen. If you do engage in such correlation, please provide answers to all the preceding questions with reference to such correlation. If your previous answers already do so, it is sufficient to simply cross-reference those answers.*

Please see AOL's introductory comments, and AOL's responses to questions 2 and 6.

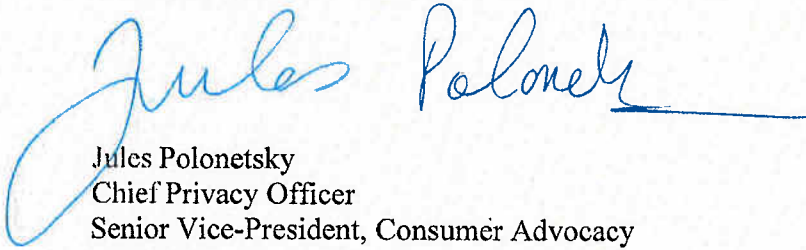
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<sup>10</sup> AOL has previously commented to the FTC on the general challenges relating to data retention for product and advertising purposes. See <http://www.ftc.gov/os/comments/behavioraladprinciples/>.

We appreciate the opportunity to be of assistance to the Committee.

Very truly yours,

A handwritten signature in blue ink, reading "Jules Polonetsky". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Jules Polonetsky  
Chief Privacy Officer  
Senior Vice-President, Consumer Advocacy  
AOL LLC